IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 06..11..2007

Coram:

The Hon'ble Mr. Justice K.CHANDRU

W.P.Nos.12254, 13115, 13152, 13158

to 13160, 13350, 13353, 13790

to 13795, 14933 and 15693 of 2007
and
M.P. Nos.1 of 2007 in respective W.Ps.

G.Shanmugaiah	..Petitioner in W.P. No. 12254 of 2007
R.Murugan	..Petitioner in W.P. No. 13115 of 2007
J.Punitha	..Petitioner in W.P. No. 13152 of 2007
T.Ramasubramanian	..Petitioner in W.P. No. 13158 of 2007
D.Gunaseelan	..Petitioner in W.P. No. 13159 of 2007
R.Sasikumar	..Petitioner in W.P. No. 13160 of 2007
K.Samraj	..Petitioner in W.P. No. 13350 of 2007
L.Maria Sorna Revathy	..Petitioner in W.P. No. 13353 of 2007
Mary Jaya	..Petitioner in W.P. No. 13790 of 2007
I.Ruban	..Petitioner in W.P. No. 13791 of 2007
C.Mary Latha	..Petitioner in W.P. No. 13792 of 2007
A. Anitha	..Petitioner in W.P. No. 13793 of 2007
R.Lakshmi Devi	..Petitioner in W.P. No. 13794 of 2007
R.Rajmohan	..Petitioner in W.P. No. 13795 of 2007
S.Rajendran	..Petitioner in W.P. No. 15693 of 2007

Vs.

1. The District Collector
   Kancheepuram District

2. District Revenue Officer
   Kancheepuram District

3. Tahsildar (Relief and Rehabilitation)
   Kancheepuram District

4. Tahsildar
   Tambaram
   Kancheepuram District

5. District Elementary Educational Officer
   Kancheepuram District .. Respondents in all W.Ps.

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Petitions are filed for issuance of writ of Certiorarified Mandamus calling for the concerned records from the second respondent and quash the order of the second respondent bearing Na.Ka. 31179 / 2006-46, 36, 23,16,7,48, 43, 40, 17, 39, 33, 43, 14 and 19 rspectively X.1 dated 09.02.2007 and consequently direct the fifth respondent to consider the petitioner for appointment to the post of Secondary Grade Teacher pursuant to the notice dated 14.9.2006 bearing Na.Ka. No. 3720/A5/06 and verification of records on 26.10.2006.

W.P. No. 14933 of 2007

D.Judson Patturaj ..Petitioner

Vs.

1. The District Elementary Educational Officer
   Kancheepuram District

2. District Revenue Divisional Officer
   Kancheepuram, Kancheepuram District .. Respondents

Petition filed for issuance of writ of a Mandamus directing the first respondent to consider the petitioner for appointment to the post of Secondary Grade Teacher pursuant to the notice dated 14.9.2006 bearing Na.Ka. No. 3720/A5/06 and verification of records on 26.10.2006.

For Petitioner in all the WPS : Mr. Balan Haridas

For Respondents in all the WPS : Mrs.Bhavani Subbarayan, AGP

ORDER

I have heard Mr.Balan Haridas, learned counsel appearing for the petitioners and Mrs. Bhavani Subbarayan, learned Assistant Government Pleader representing the respondents and have perused the records.

2. Excepting W.P. No. 14933 of 2007, all other writ petitions are identical inasmuch as the challenge is to the order passed by the second respondent District Revenue Officer, Kancheepuram District.

3. In W.P. No. 14933 of 2007, the prayer is for a direction to the first respondent District Elementary Educational officer to consider the petitioner's appointment for the post of Secondary Grade Teacher pursuant to the notification issued by them.

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4. In W.P. No. 15693 of 2007, this Court granted an interim order reserving one post to be kept vacant pending further orders in the writ petition. In all these cases, the impugned order has been passed by the second respondent District Revenue Officer cancelling the Community Certificate, Migration Certificate and Residential Certificate issued in respect of the respective petitioners. The reason found in the order is that the certificates were obtained by the petitioners only with a view to justify their names in the District Employment Exchange and wrong information have been given for obtaining the certificates. It was also stated that there was no record to show that the petitioners had resided in these places before they got themselves registered in the Employment Exchange.

5. In all these cases, the petitioners were all trained teachers having eligibility for being appointed as Secondary Grade Teachers. Insofar as the recruitment of the Secondary Grade Teachers in respect of the Government and Municipal Schools in the State is concerned, the Revenue District is treated as an Unit and the names are sponsored from the Employment Exchange and on the basis of seniority, persons are being appointed. In view of the District being kept as an Unit, there has been large scale migration of candidates from one District to other Districts. Since several complaints have been made about the migration from one District to the other Districts, the Government have issued G.O. Ms. No. 66, Labour and Employment (N2) Department dated 15.7.2002. Paragraphs 2 to 4 of the said G.O. are extracted below:

> "2. In order to prevent re-registration with bogus residential certificates, the Director of Employment and Training in his letter first read above has sent a proposal for the discontinuance of the existing procedure of obtaining residential certificate from the Tahsildar concerned in the new District and for obtaining a family migration certificate for re-registration from one District to another District. The Director has also requested the Government to issue orders that the new registrants should be allowed to register their names in the Employment Exchanges only on production of Ration Card and for registration for change of address within the District, the registrants should produce the family migration certificate.
>
> 3. The Principal Commissioner and Commissioner for Revenue Administration, in his letter second read above has accepted the proposal of the Director of Employment and Training for issue of family migration certificate instead of residential certificate by the Tahsildars for re-registration of name from one District to another District subject to the condition that their names must be registered based on the Ration Card.

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4. The Government, after careful consideration, pass the following orders:-

(i) New registrants should produce an attested copy of their Ration Card as proof of address.

(ii) Registrants who seek re-registration from one District to another, should produce:-

(a) family migration certificate issued by the Tahsildar concerned in the new District in the form enclosed with this G.O., and

(b) an attested copy of the new Ration Card showing the new address.

(iii) Registrants who seek change of address within the same District should produce an attested copy of their Ration Card showing the new address."

6. Therefore, as the Government itself envisages the migration of persons from one place to other places, there is no illegality about the said migration of the candidates including the petitioners herein. Once the Government has issued orders for allowing either fresh registration of candidates from other Districts in the Employment Exchange or re-registration of such candidates in another District, then the role of the Revenue authorities is only to see that bogus certificates are not created. In the guise of weeding out the bogus claims made by persons, the respondents cannot deny the case of genuine candidates being migrated from one District to other Districts. Ultimately, employment cannot be granted solely based upon the residential requirement and if such a criteria is made, that would offend Article 16(2) of the Constitution of India.

7. In the present case, the certificates produced by the petitioners are not disputed and in fact, in respect of the Community Certificate, Migration Certificate as well as Residential Certificate, all these have been issued only by Revenue authorities. Therefore, necessary care and caution must be taken by them at the time of issuance of the certificates. Once these certificates are found to be genuine and not fictitious, then there will be very little function by the second respondent in verifying the certificates. It is not as if when the inspection was made by the second respondent, the petitioners were not residing in the address given by them. On the contrary, the second respondent has taken a curious stand that these persons are coming from different Districts and the present attempt for registering in the Employment Exchange was only with a view to get an employment. Such a superficial statement is not expected from the officers of the second respondent. In fact, the Government itself has recognised the attempt of the candidates to migrate from one place to other places. Insofar as the motive of the petitioners is concerned in migrating from one District to other Districts, even if they have an idea to

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get employment as motive, such motive is so long as not illegal or unconstitutional, no exception can be taken about their intention. On the contrary, the Revenue authorities are only directed to find out the genuineness of the certificates produced by them and also to see whether the petitioners are residing in the addresses given by them or such addresses are given only for the purpose of getting a Residential Certificate. Even, there is no stipulation as to how long the petitioners should stay a particular place.

8. In fact, this Court in a case relating to A.S. Santhalatha v. District Collector, Thiruvarur and others reported in 2005 W.L.R. 433 made a distinction between the Nativity Certificate and Residential Certificate. Paragraphs 6 to 8 of the said order may be usefully extracted:

Para 6: "On the other hand, the Circular No.22 of 1997 relates to the issuance Residence Certificate. The said circular does not stipulate any condition as to the period of residence in a particular place for a person to obtain such certificate. Moreover, the said circular refers to the right of a person moving from one district to another district for justifiable reasons to obtain such a certificate, more particularly, for the purpose of effecting change of registration in the employment exchange. In fact this guideline came up for consideration before this Court in W.P. No. 183 of 2001 and the translated portion of the circular reads as under:-

"Those persons who seek change of their Employment Registration from one District to another must make their application along with the copy of certificate of residence issued by an officer not below the rank of Tahsildar of the District to which the change of registration shall not be done in the event of non-production of the certificate of residence issued by the said authority. The above said certificate from the applicant, one to be retained in the office file of the Employment Exchange effecting transfer and the other to be forwarded to the Employment Exchange to which transfer is sought for. The copy of the said certificate of residence received by the Employment Exchange where the change of registration is sought for should be perused and should be placed in the concerned file. A detailed note in this regard should be mentioned in F.O.U. Column."

After observing the purport of the circular, this Court had directed the District Collector to consider the case of the petitioner for issuance of Residence Certificate.

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Para 7: From the above, it is seen that a Certificate of Residence is with reference to the place where a person resides for justifiable reason and does not stipulate any condition for a minimum period of stay in a particular place. On the other hand, the Nativity Certificate refers to the person's birth or his residing in a particular place. In this context, the Concise Oxford Dictionary Tenth Edition Defines "residence" as 1. the fact of residing somewhere. 2. the place where a person resides; a person's home. 3. the official house of a government minister or other official figure. The said dictionary defines "nativity" as 1. the occasion of a person's birth. 2. the birth of Jesus Christ.

Para 8: From the above discussions, the following two further issues arise for consideration. By the impugned order, the first respondent relied upon the Government letter which relates to the Nativity Certificate. This, in our view, cannot be accepted, as the petitioner has applied only for a Residence Certificate and not for a Nativity Certificate. Secondly, when this Court had already directed the District Collector to consider the request of the petitioner for issuance of Residence Certificate with reference to the Circular No. 22 of 1997, placing reliance on the Government letter dated 16.6.1984 by completely ignoring the Circular No. 22 of 1997 cannot also be sustained."

9. Even a Constitution Bench of the Supreme Court in its recent judgment in Kuldip Nayar v. Union of India reported in AIR 2006 SC 3127 dealt with a question as to what is the term 'an ordinarily resident' connotes in terms of law in paragraph 243 and the same is reproduced below:

Para 243: "Thus, residence is a concept that may also be transitory. Even when qualified by the word "ordinarily" the word "resident" would not result in a construction having the effect of a requirement of the person using a particular place for dwelling always or on permanent uninterrupted basis. Thus understood, even the requirement of a person being "ordinarily resident" at a particular place is incapable of ensuring nexus between him and the place in question.

10. A Division Bench of this Court in its decision reported in 1989 W.L.R. 420 [National Life Insurance Employees' Association and another v. The Life Insurance Corporation of India, Madras] held that if preference is shown in terms of any residence, such a

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preference is violative of Article 16(2) of the Constitution of India and the relevant passage found in paragraph 8 of the said order is extracted below:

Para 8: "The plea of the respondent that the nature of posts is such that those in and around the concerned branches could be employed, will have no relevance, because even in respect of those posts, they are transferable. Learned counsel for the respondent had relied on Air India v. Nergesh Meerza, M/s B.Y. Kshatriya Pvt.Ltd. v. S.A.T.R. Kangan Union and B.Y. Kshatriya Pvt. Ltd. v. Union of India, to show that there could be reasonable classification adopted to achieve certain objectives as found in the enactments, but in the instant case, when Regulations had been framed under the Life Insurance Corporation Act relating to recruitments and appointments go be made by it, the offending procedure, above referred to, should not have been adopted by it. It is, therefore, violative of Article 16(2)."

11. Therefore, the statement of the District Revenue Officer that the intention of the petitioners was only for the purpose of getting their names registered in the Employment Exchange and, therefore, the certificates obtained by them are sought to be cancelled, is clearly illegal and contrary to the purpose behind which it was ordered.

12. At the time of granting Community Certificate as well as Migration Certificate and Residential Certificate, necessary enquiry should have been made by the Revenue authorities. In the present case, the petitioners were also in possession of Photo Identity Card for having got their names registered in the Voters' List. When such an enquiry is made and appropriate Certificates are issued, it is not clear as to on what material, the second respondent District Revenue Officer has cancelled the certificates of the petitioners by a one sentence order. In fact, his entire attempt proceeds on a wrong premises that it was illegal to migrate from one place to other place and, therefore, if any such registration is made for the purpose of getting employment, that itself is illegal. The attempt made by the District Revenue Officer to start proceeding on a wrong notion is clearly not envisaged in the Government Order extracted above. He has also not kept in mind the parameters under which any such decision is made.

13. In fact, in paragraph 3 of the petitions, the petitioners have asserted that they have migrated permanently to Kancheepuram. In these cases, all the petitioners have gone for interview for the post of Secondary Grade Teachers and if they are eligible and coming within the zone of consideration for seniority, there can be no

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impediment for employment in any vacancy arising out of the Schools situated in Kancheepuram District.

14. In the light of the materials produced by the petitioners, the impugned order is clearly arbitrary and is not borne out by records. Under these circumstances, all the writ petitions shall stand allowed and the impugned orders stand quashed. The respondents are directed to register the names of the petitioners in the Employment Exchange with due seniority and also restore the certificates, viz., Community Certificate, Migration Certificate and Residential Certificate, which were cancelled by the impugned orders.

15. Insofar as W.P. No. 14933 of 2007 is concerned, the prayer is only for a direction to consider the case of the petitioner in the light of his registration in the Employment Exchange. This petition also stands disposed of with the above direction. However, there will be no order as to costs. Connected Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To
1. The District Collector
Kancheepuram District

2. District Revenue Officer
Kancheepuram District

3. Tahsildar (Relief and Rehabilitation)
Kancheepuram District

4. Tahsildar
Tambaram, Kancheepuram District

5. District Elementary Educational Officer
Kancheepuram District

15 ccs to Mr. Balan Haridoss, Advocate, Sr. 66781 to 66796
2 ccs to the Government Pleader, Sr. 66832 and 66855

W.P. No.12254 of 2007, etc. batch

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